

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)

Petition of US West Communications, Inc.,)
for a Declaratory Ruling Regarding the)
Provision National Directory Assistance)

BellSouth Petition for Limited Reconsideration)
_____)

CC Docket No. 97-172

Report No. 2370

OPPOSITION OF EXCELL AGENT SERVICES, L.L.C.

Excell Agent Services, L.L.C. ("Excell Agent Services" or "Excell"), by its attorneys,
hereby opposes the petition of BellSouth Corporation ("BellSouth")¹ seeking reconsideration of
the FCC's interpretation of section 271(g)(4) in the NDA Order.² BellSouth requests that the
FCC reconsider its interpretation of the clause "information storage facilities of such company"

¹ See Bell South Petition for Limited Reconsideration, CC Docket No. 97-172 (filed Oct. 27, 1999) ("Petition").

² See Petition of US WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, Petition of US WEST Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Memorandum Opinion and Order, CC Docket Nos. 97-172 and 92-105 (rel. Sept. 27, 1999) ("NDA Order"). In the NDA Order, the FCC granted US WEST forbearance from the separate affiliate requirement in section 272 for the provision of its region wide directory assistance services. The FCC also determined that US WEST was not permitted to provide nation wide non-local DA because it does not own the information storage facilities used in its provision of nation wide non-local DA.

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in section 271(g)(4) to require US WEST (and presumably the other Bell operating companies) to “own” their own information storage facilities in order to qualify for the incidental interLATA service exception in section 271(g)(4).

Section 271(b)(3) permits a Bell operating company (“BOC”) or its affiliate to provide “incidental interLATA services” (as defined in subsection (g)) at the date of the enactment of the Telecommunications Act of 1996.³ One of the permissible incidental interLATA services under section 271(g)(4) is a “service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA.”⁴ In the NDA Order, the FCC determined that section 271(g)(4) permits a BOC to offer non-local directory assistance (“DA”) as an incidental interLATA service. However, the FCC recognized that the statute, fairly read, requires that a BOC must own the information storage facilities used in the provision of its non-local DA.⁵ The FCC stated that its “construction of the statute is apparent from Congress’ use of the term ‘such

³ See 47 U.S.C. § 271(b)(3).

⁴ 47 U.S.C. § 271(g)(4).

⁵ NDA Order, paras. 23-27. In the NDA Order, the FCC also determined that it would forbear from applying the separate subsidiary requirements of section 272 to US WEST, but retain certain nondiscrimination requirements pursuant to section 272(c)(1). Under these nondiscrimination provisions, US WEST must: (1) make available to unaffiliated entities all of the in-region directory listing information it uses to provide region wide DA service at the same rates, terms, and conditions it imputes to itself; (2) make changes to its cost allocation manual to reflect this imputation; (3) make the directory listing information of the customers of independent and competitive local exchange carriers operating in its region available to unaffiliated entities if the BOC uses the same information in its provision of non-local DA service; and (4) update and maintain the directory listing information it provides to unaffiliated entities in the same manner it updates and maintains the directory listing information it uses in the provision of non-local DA service. Id. para. 37.

company' in setting forth the types of services authorized by section 271(g)(4).”⁶

In its Petition, BellSouth offers alternate interpretations of section 271(g)(4) or suggestions for revisions to the ownership requirements of the NDA Order. First, BellSouth would interpret the “information storage facilities of such company” (in the context of section 271(g)(4)) to mean the “information storage facilities the costs of which the BOC has incorporated into its costing and pricing structure for the service.”⁷ Not only is this interpretation vague and confusing, but it is entirely too broad. Section 271(h) states that the “provisions of subsection (g) are to be narrowly construed.”⁸ Thus, the FCC must confine its interpretation of section 271(g)(4) to what is found in the text of the statute and BellSouth’s proposed interpretation is certainly outside of these limits.

Second, BellSouth proposes that an alternative would be to allow a BOC to share non-local DA storage facilities with another company.⁹ BellSouth states that the FCC’s interpretation of section 271(g)(4) limits the BOC’s ability to provide incidental interLATA services efficiently and economically, which will adversely affect competition.¹⁰ BellSouth also states that under the

⁶ Id. para. 23. The FCC has previously stated that the incidental interLATA services in section 271(g)(4) are the services that permit customers “located in one LATA to retrieve information from, or file information for storage in, information storage facilities of [a BOC or its affiliate] that are located in another LATA.” Nevada Bell, Pacific Bell, and Southwestern Bell Telephone Company; Petition for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Reverse Search Services, Memorandum Opinion and Order, 1999 FCC LEXIS 1523, para. 6 (rel. Apr. 9, 1999).

⁷ Petition, at 7.

⁸ 47 U.S.C. § 271(h).

⁹ Petition, at 7.

¹⁰ Id. at 6.

FCC's interpretation, the BOCs are required to make individual investments in their own databases resulting in needless duplication of costs and facilities.¹¹ These statements suggest that BellSouth intends for the BOCs to share information storage facilities as a way to comply with the NDA Order. The FCC should find that this suggested alternative falls outside of the boundaries set by section 271(g)(4). Indeed, broadening the interpretation of section 271(g)(4) to allow for BOCs to jointly own information storage facilities is prohibited by the "narrowly construed" edict of section 271(h). Moreover, the FCC determined in the NDA Order that the BOCs (specifically US WEST) enjoy competitive advantages in the provision of directory assistance throughout their respective regions.¹² To permit BOCs to jointly own information storage facilities under section 271(g)(4) would also allow the BOCs to use their dominance in the market for DA services in a way that could impede competition in the provision of non-local DA.

Finally, it appears that BellSouth wants the FCC to decide that the requirement to own information storage facilities would be satisfied by a 10% or more ownership interest in the information storage facilities. BellSouth derives this suggestion from the current definition of "affiliate" in section 47 U.S.C. § 153(1). Section 153(1) defines "affiliate" as:

(1) Affiliate.--The term "affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.¹³

¹¹ Id.

¹² See NDA Order, para. 35.

¹³ 47 U.S.C. § 153(1) (emphasis added).

If Congress wanted the definition of the term “own” found within the definition of “affiliate” to apply to all or part of the other sections in the Communications Act, it would not have used the limiting language: “[f]or purposes of this paragraph.” Thus, the definition of the term “own” is only to be used in conjunction with the definition of the term “affiliate.” Because the word “affiliate” is not used in section 271(g)(4), the section 153 definition of the term “own” bears no relation to the interpretation of section 271(g)(4).

Excell submits that the alternative interpretations and/or approaches BellSouth has proposed in its Petition should be rejected because they are prohibited by the plain language of section 271(g)(4), section 271(h), or are simply unworkable. Furthermore, although BellSouth complains in its Petition that the investment required to purchase information storage facilities is substantial and states that the ownership requirement may ultimately harm consumers and competition, it fails to report that in a separate petition it has informed the FCC and the public that it will be purchasing its own information storage facilities.¹⁴ In the BellSouth Forbearance Petition, BellSouth states that it will ensure “that all of the out-of-region listing information (as well as the in-region listing information) BellSouth uses to provide non-local directory assistance is stored in and retrieved from storage facilities owned by BellSouth.”¹⁵ The FCC should require BellSouth to reconcile that statement with its request to change the ownership requirement in the instant Petition. Finally, other BOCs, including Bell Atlantic and SBC, have purchased information storage facilities in order to comply with the section 271(g)(4) and the NDA Order

¹⁴ BellSouth Petition for Forbearance for Nonlocal Directory Assistance Service in CC Docket No 97-172, at 5-6 (filed Oct. 8, 1999) (“BellSouth Forbearance Petition”).

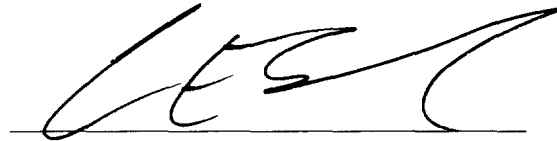
¹⁵ Id.

ownership requirement without insistence that this requirement is unfair or burdensome.¹⁶ This fact should be included in the record that the FCC reviews in the process of making a decision on the instant BellSouth Petition.

For the reasons set forth herein, Excell opposes BellSouth's Petition because it fails to present any valid reasons for amending the information storage facility ownership requirement or viable alternatives to this requirement. Therefore, Excell requests that the FCC dismiss the BellSouth Petition in its entirety.

Respectfully submitted,

EXCELL AGENT SERVICES, L.L.C.

A handwritten signature in black ink, appearing to read 'A. H. Harding', is written over a horizontal line.

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December 1, 1999

¹⁶ See e.g. Petition of Bell Atlantic for Further Forbearance from Section 272 Requirements in Connection with National Directory Assistance Service, CC Docket No. 97-172 (filed Nov. 5, 1999); see also Petition of SBC Communications Inc. for Forbearance of Structural Separation Requirements and Request for Immediate Interim Relief in Relation to the Provision of Non-local Directory Assistance Services, CC Docket No. 97-172 (filed Nov. 2, 1999).


CERTIFICATE OF SERVICE

I, Tonya Y. VanField, hereby certify that a copy of the foregoing Opposition to BellSouth's Petition for Limited Reconsideration in CC Docket No. 97-172 (Report No. 2370) was served this 1st day of December, 1999, via hand delivery and first-class mail, upon the following:

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